IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12231 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IBRAHIM RAMJU BAYAD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12231 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent Nos. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 21/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. KU Mishra for the petitioner detenu and ld. AGP Ms. HB Punani for the

respondent State.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 03.06.2004 passed by the District Magistrate, Kutch at Bhuj, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate for recording subjective satisfaction and passing the order of preventive detention, in reference to the Scheme of Sec.3 R/w 9(1) of the PASA Act, the detaining authority -District Magistrate, Kutch at Bhuj has taken into account the fact of registration of nine different criminal offences punishable under The Bombay Prohibition Act. On all the aforesaid occasions, the petitioner detenu was involved in the illegal activities in connection with country-made liquor between 31.05.2002 and 09.04.2004 i.e. within a span of nearly about 2 Years. Details regarding offence registered against the detenu are given in tabular form on page nos. 1 & 2 of the grounds of detention conveyed to the detenu and it appears that area of operation and activities of the petitioner detenu being same, all the offences have been registered at one police station i.e. Anjar Police Station. Detaining authority has also considered the facts stated by three witnesses whose statements were placed before it by the sponsoring authority wherein three witnesses have narrated the facts as to bootlegging activities of the detenu and his behaviour and conduct with general public. Ms. KU Mishra, ld. counsel appearing for the detenu has fairly accepted that the fact of registration of 9 offences between aforesaid period can be said to be a matter of sensitive nature, but according to her, order of detention is not sustainable and detention also can not be said to be legal and, therefore, the same should be terminated.

4. The order of detention is challenged on various grounds mentioned in the petition. However, ld. counsel Ms. Mishra appearing for the detenu has challenged the legality and validity of the order mainly on two grounds. Placing reliance on the decision of this Court in Spl.Civil Application No.10182/2003 decided on 26.08.2003, she submitted that there is a delay in

passing the order of preventive detention which has made the order of detention bad and arbitrary. The detaining authority ought to have passed the order promptly. She has pointed out that the last offence registered against the petitioner is on 09.04.2004. Of course, the sponsoring authority has recorded three statements on variouis dates between 07.04.2004 and 09.04.2004. The statement of a third witness is recorded on 09.04.2004 i.e. on the date of commission of last offence. Interestingly, ld. counsel has pointed out that though statements of two witnesses have been allegedly recorded prior to the commission of last offence, all the three witnesses were taken for first verification before the DySP Anjar on 15.04.2004. Recording of these statements does not inspire any confidence and it gives an impression that all the three statements must have been recorded on 09.04.2004 and, therefore, those three witnesses were taken before the DySP, Anjar for verification on 15.04.2004. This Court has consistently while testing the detention order on the touchstone of promptness required in passing such order, has found the date of registration of last offence as more relevant. So, from 09.04.2004 when two witnesses were very well before the sponsoring authority, papers could have been placed immediately before the detaining authority, but papers and statements of all the three witnesses were placed before the detaining authority on 25.05.2004. The detaining authority has verified the statements on 20.05.2004. So, the delay caused in placing the papers before the detaining authority is of more than one month in the present case which has remained unexplained. In the same way, though the verification of the statement was made on 20.05.2004, the order under challenge is passed on 03.06.2004. So, there is again a further delay of about 14 days in passing the order of detention. This delay, in view of the observations of this Court in above-referred petition and especially in para-6 of said decision, the impugned order of detention requires to be quashed and set aside, on this sole ground.

5. The next ground pressed into service by the ld. counsel appearing for the petitioner detenu is that there is unreasonable and unexplained delay in considering the representation and well as in communicating the decision to the detenu expeditiously. Ld. counsel has submitted that detenu has made representation on 27.08.2004 which was rejected by the authority concerned on 03.09.2004 and decision was communicated to the detenu on 08.09.2004, though the petitioner was very well there in Central Prison, Sabarmati Ahmedabad and decision is taken by the competent authority at Gandhinagar. In view of above,

ld. counsel appearing for the detenu has submitted that this is a case of unexplained delay and on this sole ground the order of detention is vitiated and detention of the detenu becomes illegal and same should be terminated. Thus, there is delay in both count viz. delay in considering the representation and delay in communicating the decision and on this sole ground, petition requires to be allowed. So, in view of the ratio of the decision of the Apex Court in the case of Harish Pahwa v/s State of U.P., AIR 1981 SC 1126, the impugned order of detention also requires to be quashed on the ground of delay in dealing with and communicating decision on the representation to the detenu promptly. Relevant observations of the Apex Court are reproduced as under:-

> "..... We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This is not having been done in the present case we have no option but to declare the detention unconstitutional."

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 03.06.2004, passed by the District Magistrate,Kutch at Bhuj , is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

*rawal